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In Re:  
Nicholas R Crooks  
and Candace M Crooks,  
Debtors,

Case No. 04-34474

Chapter 7 Case

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY**

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TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. Home Town Federal Credit Union moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on September 27, 2004 at 10:30 AM o'clock, in Courtroom No. 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, MN.
3. Any response to this motion must be filed and delivered not later than September 22, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 16, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 2, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2002 ALUMACRAFT TROPHY 175 BOAT, 2002 YAMAHA 115 MOTOR, and 2000 SHORELANDER 1823 TRAILER, (the collateral), and requests the court permit Movant

- to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).
6. Movant requests relief from the stay for cause under §362(d)(1). Debtors are delinquent under the terms of the original contract with Movant.
  7. Movant gives notice that it may, if necessary, call Yvonne Blum, or some other representative of Movant, from Movant's offices in Minnesota, to testify regarding the debt and value.
  8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the property promptly upon the Court signing the Order.
  9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

**WHEREFORE**, Home Town Federal Credit Union moves the Court for an order modifying the automatic stay of §362(a) and such other relief as may be just and equitable.

Dated: September 8, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

<b>STATE OF MINNESOTA</b>			
<b>CERTIFICATE OF TITLE</b>			
<b>TO A WATERCRAFT</b>			
THIS TITLE IS PRIMA FACIE PROOF OF OWNERSHIP - KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE			
VIN IDENTIFICATION NO.	ALUMINUM	2002	17 1/2 TROPHY 175
REGISTRATION NO.	NEW	08/28/2001	
DATE ISSUED	08/28/01	ALUMINUM	7402/02
ASSIGNMENT BY SELER (TRANSFEROR)			
SELLER'S SIGNATURE			
BUYER'S SIGNATURE			
1ST SECURED PARTY (NONE NEEDED)			
CROOKS NICHOLAS RAY		FARIBO CREDIT UNION	
2415 JOHNNY BLODGE ROAD		122 NW 9TH AVENUE	
FARIBAULT MN 55021		FARIBAULT MN 55021	
Lien Date: 8/28/2001			
CONTROL NO.	397961		

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

CROOKS NICHOLAS RAY  
26 NW 8TH ST  
FARIBAULT MN 55021

First Class  
U.S. Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

H59994

00 Year	MIDI Make	BTTRL Model	H3040N562 Title NR.
1MDUA5R16YA101706 VIN	08/28/01 Security Date	NO Rebuilt	

1ST SECURED PARTY

**LIEN HOLDER**

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

FARIBO CREDIT UNION  
122 NW 9TH AVE  
FARIBAULT MN 55021-4965

**EXHIBIT A**

Home Town Federal Credit Union		BORROWER NAME AND ADDRESS (Printed as "I", "me", "my")	
Owatonna Office 2490 W. Bridge St. Owatonna, MN 55060 (507) 451-3798	Hy-Vee Office 1620 So. Cedar St. Owatonna, MN 55060 (507) 451-3798	Faribault Office 122 NW 1st Ave. Faribault, MN 55021 (507) 332-2288	NICHOLAS R CROOKS 2419 JOHNNY RIDGE RD FARIBAULT, MN 55021 Co-Borrower: Candace Crooks
DATE 30 AUG 2001		NOTE NUMBER 18115	
ACCOUNT NUMBER 53520L3	INTEREST RATE X FIXED	VARIABLE	
FEDERAL DISCLOSURES			
ANNUAL PERCENTAGE RATE (The cost of any credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost or if I pay as scheduled)	AMOUNT FINANCED (The dollar amount the credit provided to me or on my behalf)	TOTAL OF PAYMENTS (The amount I will have paid when I have made all of my payments as scheduled)
9.000 %	\$ 4,963.14	\$ 16,700.00	\$ 21,663.14
PREPAYMENT: If I pay off the loan early, I will not have to pay a penalty.			
The Annual Percentage Rate: <input type="checkbox"/> is a fixed rate <input type="checkbox"/> is a variable rate and may change if:			
My Payment Schedule will be:	Number of Payments 154 And 1 of \$103.14	Amount of Payments \$140.00	When Payments are Due BEGINNING 28 SEP 01 MATURING 24 AUG 07
SECURITY: Collateral for other loans will also secure this loan, except for such collateral that would provide me with a right of redemption hereunder. I am giving you a security interest in my home, share draft and other deposit accounts with you and in:		PROPERTY INSURANCE: If this loan is secured by tangible personal property as indicated below, property damage insurance is required by you. Such insurance is not obtainable from or through you. I may obtain property insurance from any insurance company of my choice that is acceptable to you.	
LATE FEE OF \$15.00 IF PAYMENT IS MORE THAN 5 DAYS PAST DUE		Filing Fee Non-Filing Insurance	
ITEMIZATION OF THE AMOUNT FINANCED			
LOAN PROCEEDS \$ 16,700.00	AMOUNT OWED TO ME DIRECTLY \$ 0.00	TRUCK (UNPAID BALANCE ON LOAN) \$ 0.00	PREPAID FINANCE CHARGE \$
Amount Paid to \$ 16,700.00	NICHOLAS R CROOKS AND LACA	To	To
Others on \$	To	To	To
My Behalf \$	To	To	To
The following paragraph applies only if this is a variable rate loan: The initial rate of interest is % Interest interest will be charged from the date of this loan until I have paid what I owe under this Agreement. The interest rate is subject to change as follows:			
Promise to Pay: I promise to pay \$ 16,700.00 to you plus interest on the unpaid balance at 9.000 % per year until what I owe has been repaid.			
Security Description: MODEL YEAR ID NUMBER TYPE VALUE			
2002 ALUMACRAFT TROPHY 175 BOAT ACB36422H102			
2002 YAMAHA 115 MOTOR 88V2-309487			
2000 Shorelander 1823 Trailer 1MDUA5R16YA191706			
Other (Describe):			
SHARES PLEDGED:	\$	Acct. #	\$
I acknowledge receipt of the Federal Disclosures above and that I have read a completed copy of the Agreement Provisions set forth on the reverse side of this Disclosure Statement and Credit Agreement, and understand and agree to the terms stated therein.			
X <i>Nicholas R. Crooks</i> Date 8-30-01		X <i>Candace Crooks</i> Date 8/30/01	
X _____ Date _____		X <i>Shannon Blum</i> Date 8/30/01	
CO-BORROWER'S SIGNATURE (if applicable)		WITNESS'S SIGNATURE	
THE CREDIT INSURANCE OFFERED BELOW IS VOLUNTARY AND IS NOT REQUIRED TO OBTAIN CREDIT			
Following is a brief description of the BENEFITS, LIMITATIONS, COSETS, AND EXCLUSIONS of the credit insurance program offered by your credit union. Eligibility: Under age 71 for the coverage (which is paid). Under age 65 and actively working at least 25 hours per week for disability coverage. Term of life coverage: 10 years from the date of issue. Life coverage terminates after 100 months or at age 71; disability coverage terminates after 120 months or at age 65. The effective date of coverage applies retroactively for each month of advance. Benefit: Benefits and Thrifts: Monthly benefits are limited to the maximum monthly amount due on either term or death benefit (not to exceed \$250,000 and excluding any past due or non-monthly line insurance). Benefits are paid from the 15th day of disability after 14 days of consecutive disability. Term benefits will be paid the balance of term. Exclusions: Death resulting from suicide within six months from the effective date of coverage. Death resulting from suicide within six months from the effective date of coverage. Death resulting from suicide within six months from the effective date of coverage. Death resulting from suicide within six months from the effective date of coverage. Underwritten by: United States Life Insurance Company, Atlanta, Georgia.			
I authorize you to add the insurance charges to my loan each month as they become due.			
I ELECT THE FOLLOWING INSURANCE COVERAGE(S)	YES	NO	PREMIUM SCHEDULE
SINGLE CREDIT DISABILITY		X	Monthly Insurance Charge Per \$1,000 of Unpaid Balance SINGLE CREDIT DISABILITY \$1.70 SINGLE LIFE \$ .60 JOINT LIFE \$ .96
SINGLE CREDIT LIFE		X	
JOINT CREDIT LIFE		X	
DATE 8-30-01	SIGNATURE OF BORROWER ELIGIBLE TO BE INSURED (It may be checked the below date)	DATE OF BIRTH 12 NOV 1959	SIGNATURE OF JOINT INSURED (CO-BORROWER) Only required if JOINT CREDIT LIFE coverage is indicated
Credit Union			

EXHIBIT B

CLOSED-END DISCLOSURE STATEMENT AND CREDIT AGREEMENT

In this Disclosure Statement and Credit Agreement (Agreement), the Borrower and any Co-Borrower shall be referred to as "I," "me" or "my," and the Credit Union listed on the reverse side (or anyone to whom the Credit Union transfers its rights under this Agreement) shall be referred to as "you" or "your." Each person who signs this Agreement is jointly and severally liable for the repayment of credit extended under this Agreement and for the full performance of all other obligations and agreements contained in this Agreement.

**Promise to Pay:** I promise to pay to you the Amount Financed plus the Finance Charge according to the Payment Schedule, as such provisions are set forth in the Federal Disclosures on the reverse side of this Agreement, and any other applicable charges described in this Agreement (collectively, my "Loan"). I also agree to pay your reasonable costs and expenses, including reasonable attorneys' fees, incurred by you in the collection of my debt. The exact amount of my final payment (as well as the total Finance Charge and the Total of Payments) will be somewhat more or less than the amount disclosed if you do not receive each payment on its scheduled payment date.

**Late Charge:** If I am late in making a payment, I agree to pay any late charges as provided in the Federal Disclosures. I also agree to pay interest calculated at the Annual Percentage Rate on that portion of the Amount Financed included in a delinquent payment from the due date until the date payment is credited.

**Filing Fees:** If my Loan is secured by tangible personal property, I agree to pay the Filing Fee and Release Fee, if any, described in the Federal Disclosures.

**Receipt of Payments:** Payments received as provided for in this Agreement shall be credited to my Loan as of the same day. Payments received at other locations are subject to mailing delays of up to five calendar days.

**Acceleration:** In the event of (a) my failure to make any payment when due; (b) my failure to comply with any other obligation or requirement contained in this Agreement; (c) my death; (d) any statement made by me in connection with this Agreement being false in any material respect; or (e) my insolvency or the filing of any request for relief under the United States Bankruptcy Code by or against me; then, upon your election and upon notice required by applicable law, if any, the entire unpaid balance of my Loan shall become immediately due and payable. You may also exercise any other rights provided by applicable law.

**Security Agreement:** As security for payment and performance of all my obligations to you under this Agreement, and any other amounts due the Credit Union for any reason, including all debts incurred by credit card, whether they now exist or arise in the future, including to the extent permitted by law, any extensions, renewals or refinances, you shall have (collectively, "Collateral"): (i) in accordance with 12 U.S.C. Section 1707 (11) the right to impose a lien on my present and future shares and dividends; and (ii) a security interest in certain other personal property described in the Federal Disclosures. The Collateral shall include any accessions to such property and any proceeds from the sale of the property. If you reasonably determine that the value of the Collateral declines, I agree to provide additional property as Collateral if you so request. If I have given you a security interest in a "Share Pledge" Account, I agree that I cannot withdraw any amount from such account if it would reduce the amount in such account below the lesser of: (a) the outstanding balance of my Loan, or (b) the amount listed as the maximum interest pledged. The Collateral also includes any payment of all your reasonable costs and expenses (including attorneys' fees) incurred in the collection of my Loan. The lien and security interest above will not apply to any of my cash, individual retirement accounts or other tax deferred accounts.

**Protection of Collateral:** I agree: (a) to maintain, protect and preserve the Collateral; (b) not to use or permit anyone to use the Collateral in violation of this Agreement or any statute, regulation or ordinance, or any policy of insurance covering the Collateral; (c) to pay promptly when due all taxes, charges, encumbrances or liens now or later imposed upon or affecting the Collateral; (d) to notify you promptly of any change of my name or address on file; (e) to help you do all that is necessary to protect your security interest in the Collateral, including giving you all endorsements, assignments, financing statements, or other writings which are necessary to protect your security interest in the Collateral; (f) not to sell, encumber, lease, rent, otherwise dispose of, or give the Collateral to anyone else (other than you); (g) to promptly deliver to you, in the form received, all proceeds of the Collateral received; (h) at any reasonable time, upon your demand, to exhibit to you and allow you to inspect the Collateral; (i) unless delivered to you, to keep the Collateral at my residence, as set forth in your records, and not to remove it from that location without your written permission; and (j) to insure any Collateral which is tangible personal property for its full value against loss and damage with an insurance company acceptable to you and provide you with evidence of such insurance. I may purchase insurance on the Collateral from anyone I choose that is reasonably acceptable to you, and such insurance shall contain a loss payable clause in favor of you. If the Collateral is lost or damaged, you can use the insurance proceeds to replace or repair the Collateral or pay any amounts owed you. If you do not insure the Collateral and provide you with evidence of such insurance or fail to pay taxes on the Collateral when due, you may, at your option, insure the Collateral or pay such taxes, but you shall have no obligation to do so. I agree to repay the costs incurred by you in connection with your payment of such taxes or procurement of such insurance, which will, at your option, either (i) in full on demand or (ii) in installments with a Finance Charge at the Annual Percentage Rate shown on the Federal Disclosures, which will, at your option, either increase the amount or number of my payments. If any event described in the Acceleration paragraph occurs, you can take possession of the Collateral and sell (or reduce the unpaid balance of) my Loan after giving me the proper notice required by law or you can exercise any other rights and remedies given to secured parties under the Uniform Commercial Code or other applicable law. Upon your request, I shall deliver the Collateral at a time and place that you choose. You will not be responsible for any of my other property, not covered by this Agreement, that I leave inside the Collateral. In the event of a sale, your expenses for taking possession of and selling the Collateral will be deducted from the money received from the sale. These costs include the cost of storing the Collateral, preparing it for sale, and attorneys' fees to the extent permitted by law. The balance of the sale money proceeds will be applied to the unpaid balance of my Loan, with any excess refunded to me. To the extent permitted by applicable law, I will pay any amount that remains unpaid after the sale proceeds have been applied to the unpaid balance of my Loan and pay interest on such amount calculated at the Annual Percentage Rate until paid in full.

**Credit Insurance:** The premiums for my credit life and/or disability insurance are financed, and I shall pay interest on such amount calculated at the Annual Percentage Rate. Although such insurance is freely cancelable, it will be retained in effect until I have notified you of my intention to cancel.

**Severability:** If any provision of this Agreement shall be held invalid or unenforceable, then this Agreement shall be construed and enforced as if it did not contain such provision.

**Waiver:** Your rights, powers and remedies under this Agreement shall be cumulative and in addition to all rights, powers and remedies provided by law. No failure or delay by you in exercising any such right, power or remedy shall be deemed a waiver thereof, and such waiver must be in writing signed by you.

**Notice:** All notices required to be given to me under this Agreement shall be mailed to the most recent address I have provided you in writing.

**Governing Law:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Minnesota.

09/01/2004 10:54 507446813 HOME TOWN FED CU PAGE 05

Form with fields for borrower information, loan details, and signatures. Includes sections for "Borrower Information", "Loan Information", and "Signatures".

04-03663-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Nicholas R Crooks  
and Candace M Crooks,  
Debtors,

Case No. 04-34474

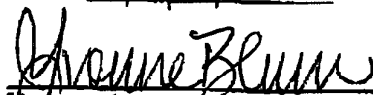
Chapter 7 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Yvonne Blum, the Designated Agent for Home Town Federal Credit Union, the Creditor herein,  
declare under penalty of perjury that the following is true and correct according to the best of my  
knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the  
Creditor on account number(s) 53520-L3.
2. The Debtor owes the Creditor \$10,336.73, payoff amount as of September 2, 2004, plus accrued  
unpaid interest thereon since that date. The bi-weekly loan payment is \$140.00. As of  
September 2, 2004, the loan payments are in arrears \$405.00 for payments owing since July 30,  
2004.
3. The debt owed to the Creditor is secured by a perfected lien on  
2002 ALUMACRAFT TROPHY 175 BOAT, HIN ACBJ6422H102  
2002 YAMAHA 115 MOTOR, SN G8V2-309487  
2000 SHORELANDER 1823 TRAILER, VIN 1MDUA5R16YA191706  
The current NADA published retail value of the collateral is \$15,945.00.
4. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True  
and correct copies of the loan documents are attached as Exhibit "B".

Dated: 9/3/04

  
Yvonne Blum  
Home Town Federal Credit Union  
2400 W Bridge St  
Owatonna, MN 55060

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Nicholas R Crooks  
and Candace M Crooks,  
Debtors,

Case No. 04-34474

Chapter 7 Case

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**MEMORANDUM OF FACT AND LAW**

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Home Town Federal Credit Union ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

**FACTS**

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral. The collateral is in Debtor's possession or control. Debtors' Statement of Intention indicates they intend to reaffirm the secured debt owed to Movant, but they have failed to do so and have failed to maintain payments post-petition on the secured debt. Debtors' attorney has stated the Debtors have changed their minds and now wish to surrender the collateral.

The total net balance due on the Contract is \$10,336.73 as of September 2, 2004.

Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments.

**ARGUMENT**

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:

- Failure to make the payments required by the Contract since July 30, 2004.
- Failure to make payments due post petition under the Contract.

Movant has not been provided with adequate protection of Movant's interest in the collateral. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to prove adequate protection and/or absence of cause.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief.

Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: September 8, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Nicholas R Crooks  
and Candace M Crooks,  
Debtors,

Case No. 04-34474

Chapter 7 Case

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Linda Jeanne Jungers, declare under penalty of perjury that on September 8, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Nicholas R Crooks  
2419 Johnny Ridge Road  
Faribault, MN 55021

Candace M Crooks  
2419 Johnny Ridge Road  
Faribault, MN 55021

Lance R Heisler  
Attorney at Law  
PO Box 740  
Northfield, MN 55057

Nauni Jo Manty  
Chapter 7 Trustee  
333 S 7th St, Suite 2000  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

Executed on: September 8, 2004

Signed: /e/Linda Jeanne Jungers  
Linda Jeanne Jungers  
STEWART, ZLIMEN & JUNGERS  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

04-03663-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Nicholas R Crooks  
and Candace M Crooks,  
Debtors,

Case No. 04-34474

Chapter 7 Case

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**ORDER FOR RELIEF FROM THE STAY**

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Home Town Federal Credit Union's Motion for an order granting relief from the stay came before the Court on September 27, 2004 at 10:30 AM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Home Town Federal Credit Union to repossess and sell the

2002 ALUMACRAFT TROPHY 175 BOAT, HIN ACBJ6422H102

2002 YAMAHA 115 MOTOR, SN G8V2-309487

2000 SHORELANDER 1823 TRAILER, VIN 1MDUA5R16YA191706

in accordance with applicable state law.

2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge